

No. 19914

Vol. 3346

IN THE
UNITED STATES
COURT OF APPEALS

For the Ninth Circuit

SEATTLE STEVEDORE COMPANY,
Appellant,

vs.

COMPANIA MARITIMA and MARITIME
COMPANY OF THE PHILIPPINES,
Appellees.

APPEAL FROM UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION
IN ADMIRALTY

APPELLANT'S PETITION FOR
REHEARING

BROZ, LONG, MIKKELBORG,
WELLS & FRYER
JACOB A. MIKKELBORG
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FEB 3 1957

WM. B. LUCK, CLERK

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The Court's opinion dated January 27, 1967, apparently holds that, merely because appellee's ship was found unseaworthy in litigation based upon a longshoreman's claim for personal injuries, the stevedore contractor, appellant here, breached his warranty of workmanlike service.

The trial court made no findings that appellant's equipment was deficient, or that appellant negligently or otherwise failed in performance, or that the method of handling cargo was improper or unreasonably unsafe. Furthermore, there is no credible evidence to support any such finding.

Liability can be imposed, on the present record, only because an accident occurred while appellant stevedore contractor was in charge of the loading activity, *regardless of the suitability of his performance* — this would make appellant stevedore an insurer.

Respectfully submitted,

BROZ, LONG, MIKKELBORG,
WELLS & FRYER

By

J. Jacob A. Mikkelsen
Proctors for Appellant

February 7, 1967

CERTIFICATE OF COUNSEL

I certify that, in connection with the preparation of this application for a rehearing, I have examined Rule 23 of the United States Court of Appeals for the Ninth Circuit, and that in my opinion, the foregoing petition is well founded and that it is not interposed for delay.

I also certify that this petition has been served on all adverse parties herein.

DOUGLAS M. FRYER
Proctor for Appellant

February 7, 1967